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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,421	07/21/2003	Patrick Timothy Yerby	2003-0071	9177
7590		05/29/2007		
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			EXAMINER	
			NICOLAS, FREDERICK C	
			ART UNIT	PAPER NUMBER
			3754	
			MAIL DATE	DELIVERY MODE
			05/29/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/625,421

Applicant(s)

YERBY ET AL.

Examiner

Frederick C. Nicolas

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5,9-17,19,41-47 and 49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5,9-17,19,41-47 and 49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-5,9-17,19,41-47 and 49 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Allowable Subject Matter***

1. The indicated allowability of claims 7-9,12-17,41-47,49 is withdrawn in view of the newly discovered reference(s) to Knight et al. 3,306,252. Rejections based on the newly cited reference(s) follow.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 3,13-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

I- Claim 3 recites the limitation "the other" in line 3. There is insufficient antecedent basis for this limitation in the claim.

II- In claims 13-14, line 3, "an aerosol cap locator" is positively recited for a second time. This renders the claims confusing as it raises issues of double inclusion.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-5,9-17,19,41-47,49 are rejected under 35 U.S.C. 102(b) as being anticipated by Knight et al. 3,306,252.

Knight et al. disclose a locking aerosol dispenser for an aerosol dispensing device having an aerosol valve (26) for controlling the flow of an aerosol product from an aerosol container (11), which comprises an actuator (19) secured to the aerosol valve for displacing the aerosol valve from a biased closed position to an open position to discharge the aerosol product, the actuator being rotatable into a first rotational position relative to the aerosol container for enabling the actuator to open the aerosol valve upon movement of the actuator for discharging the aerosol product, the actuator being rotatable into a second rotational position relative to the aerosol container for inhibiting the actuator from opening the aerosol valve (col. 5, ll. 35-69), a container locator (col. 5, ll. 59-69) for locating the actuator in the first rotational position relative to the aerosol container, a key aperture (53) cooperating with a key (36) for enabling movement of the actuator to open the aerosol valve for discharging the aerosol product, the actuator is integral with an aerosol overcap (13), wherein the container locator provides a rotational stop (54) upon the actuator being located in the first rotational position relative to the aerosol container, wherein the container locator provides an audible sound upon the actuator being located in the first rotational position relative to the aerosol container (please note that the container locator of Knight et al. will provide some types of audible sound upon the actuator being located in the first rotational position relative to the aerosol container in as much as the applicants' claimed invention), a first and a second container locator as seen in Figure 8.

***Response to Arguments***

6. Applicant's arguments filed 2/23/2007 have been fully considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Walters et al. 7,137,536, Jordan 3,608,791, Marder 3,420,410, Stirling 3,426,948, Stooddy 4,773,567, Pierson 5,316,162, Erxleben 6,196,423, Pierson 5,520,305, Taylor 5,379,924, Pittet 3,823,427, Rogers et al. 5,310,096 and Meshberg 6,691,896 disclose other types of locking aerosol dispenser.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (571)-272-4931. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver, can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you

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have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FN  
May 20, 2007

 5/20/07  
Frederick C. Nicolas  
Primary Examiner  
Art Unit 3754